

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

KEVIN OGDEN,

Plaintiff,

vs.

**LYNN JOHNSON, DOUG
SERBOUSEK, and DAVID RINIKER,**

Defendants.

No. C00-0034

INSTRUCTIONS TO THE JURY

INTRODUCTION/DUTIES/BURDENINSTRUCTION NO. 1

MEMBERS OF THE JURY:

Now that you have heard the evidence, it becomes my duty to give you the instructions of the Court as to the law applicable to this case.

It is your duty as jurors to follow the law as stated in the instructions of the Court, and to apply the rules of law so given to the facts as you find them from the evidence.

Counsel will quite properly refer to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by counsel and that stated by the Court in these instructions, you of course are to be governed by the instructions.

You are not to judge the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

Justice through trial by jury must always depend upon the willingness of each individual juror to seek the truth as to the facts from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rules of law, as given in the instructions of the Court.

Whenever a party must prove something they must do so by the preponderance of the evidence. Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

EVIDENCEINSTRUCTION NO. 2

You shall base your verdict only upon the evidence and these instructions. Evidence is: (1) testimony in person or by deposition; (2) exhibits received by the court; (3) stipulations which are agreements between the attorneys; and (4) any other matter admitted. Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide. The following are not evidence: (1) statements, arguments, questions and comments by the lawyers; (2) objections and rulings on objections; (3) testimony I told you to disregard; and (4) anything you saw or heard about this case outside the courtroom.

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable. In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witness' testimony. There are many factors which you may consider in deciding what testimony to believe, for example: (1) whether the testimony is reasonable and consistent with other evidence you believe; (2) the witness' appearance, conduct, intelligence, memory and knowledge of the facts; (3) whether the witness has given statements in the past that are inconsistent with his or her testimony at trial; and (4) the witness' interest in the trial, their motive, candor, bias and prejudice.

A witness may be discredited or impeached by contradictory evidence; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness' present testimony.

If you believe that any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

Certain testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony to the best of your ability as if it had been given live in court.

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

INSTRUCTION NO. ____ (Cont'd)

80-3

060302StJ

EXCESSIVE FORCE
INSTRUCTION NO. 3

In plaintiff's first claim, he alleges that the defendants are liable for using excessive force against him at the Linn County Jail. The claim must be considered separately as against each defendant.

Your verdict must be for plaintiff and against defendant Lynn Johnson, Doug Serbousek, or David Riniker on plaintiff's excessive force claim if all the following elements have been proved by the preponderance of the evidence:

First, the defendant under consideration did one or more of the following:

- a. Placed plaintiff on the board; or
- b. Left plaintiff on the board for an excessive period of time; or
- c. Mistreated plaintiff while he was on the board;

Second, the use of such force was excessive because it was not reasonably necessary to restore or maintain order; and

Third, as a direct result, plaintiff was damaged.

In determining whether the force was excessive, you must consider such factors as the need for the application of force, the relationship between the need and the amount of force that was used, the extent of the injury inflicted, and whether it was used for punishment or instead to achieve a legitimate purpose such as maintaining order or security within the jail and whether a reasonable officer on the scene would have used such force under similar circumstances.

If any of the above elements has not been proved by the preponderance of the evidence, then your verdict must be for defendant.

INSTRUCTION NO. __ (Cont'd)

DENIAL OF MEDICAL CAREINSTRUCTION NO. 4

The plaintiff's second claim is that he was denied medical treatment for a serious medical need at the Linn County Jail. Your verdict must be for plaintiff and against defendant Lynn Johnson or David Riniker on plaintiff's claim of deliberate indifference to his serious medical need if all of the following elements have been proved by the preponderance of the evidence:

First, plaintiff had a serious medical need for anxiety treatment; and

Second, the defendant under consideration was aware of plaintiff's serious medical need for such anxiety treatment; and

Third, the defendant was deliberately indifferent to plaintiff's serious medical need; and

Fourth, as a direct result, plaintiff was damaged.

If any of the above elements has not been proved by the preponderance of the evidence, then your verdict must be for the defendant.

A serious medical need is one that has been diagnosed by a physician as requiring treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention.

Indifference is apathy or unconcern. Deliberate indifference is established only if there is actual knowledge of a substantial risk that plaintiff would suffer serious harm without the medical treatment and if the defendant disregards that risk by intentionally refusing or failing to take reasonable measures to deal with the problem. Mere negligence or inadvertence does not constitute deliberate indifference.

DAMAGESINSTRUCTION NO. 5

If you find in favor of plaintiff, then you must award plaintiff such sum as you find from the preponderance of the evidence will fairly and justly compensate plaintiff for any damages you find plaintiff sustained and is reasonably certain to sustain in the future as a direct result of the conduct of defendants as submitted in Instructions 3 and 4. You should consider the following elements of damages:

1. The physical pain and emotional suffering the plaintiff has experienced and is reasonably certain to experience in the future; the nature and extent of any injury, whether the injury is temporary or permanent and the extent of any resulting disability.
2. The reasonable value of the medical and hospital expenses reasonably needed by and actually provided to the plaintiff.

If you find in favor of plaintiff under Instruction 3 or 4, but you find that plaintiff's damages have no monetary value, then you must return a verdict for plaintiff in the nominal amount of One Dollar (\$1.00).

Remember, throughout your deliberations you must not engage in any speculations, guess, or conjecture and you must not award any damages under this Instruction by way of punishment or through sympathy.

PUNITIVE DAMAGES
INSTRUCTION NO. 6

In addition to the damages mentioned in Instruction 5, the law permits the jury under certain circumstances to award the injured person punitive damages in order to punish a defendant for some extraordinary misconduct and to serve as an example or warning to others not to engage in such conduct.

If you find in favor of plaintiff and against defendant Johnson, Serbousek, or Riniker and if you find the conduct of that defendant as submitted in Instruction 3 or 4 was recklessly and callously indifferent to plaintiff's rights, then, in addition to any other damages to which you find plaintiff entitled, you may, but are not required to, award plaintiff an additional amount as punitive damages if you find it is appropriate to punish the defendant or deter the defendant and others from like conduct in the future. Whether to award plaintiff punitive damages and the amount of those damages are within your sound discretion.

You may assess punitive damages against any or all defendants or you may refuse to impose punitive damages. If punitive damages are assessed against more than one defendant, the amounts assessed against such defendants may be the same or they may be different.

INSTRUCTION NO. ____ (Cont'd)

80-7

060302StJ

DELIBERATIONS

INSTRUCTION NO. 7

Upon retiring you shall select a foreperson. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views. Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. Remember you are not partisans or advocates, but are judges -- judges of the facts. Your sole interest is to find the truth and do justice.

I am giving you the following verdict form. If you all agree to the verdict, it will be signed by each juror. When you have agreed upon your verdict and have signed it, inform the Court Attendant.

DATE

JOHN A. JARVEY
Chief Magistrate Judge
UNITED STATES DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

KEVIN OGDEN,

Plaintiff,

vs.

**LYNN JOHNSON, DOUG
SERBOUSEK, and DAVID RINIKER,**

Defendants.

No. C00-0034

VERDICT FORM

**Answer Part I and Part II. Answer Part III only if
you find in favor of Plaintiff and against at least one
Defendant under Part I or Part II.**

VERDICT FORM (Cont'd)

PART I: EXCESSIVE FORCE CLAIM

(Answer either A or B for each defendant. Place (T) marks to indicate your response.)

A. We, the Jury, find in favor of plaintiff and against the following defendant(s) for the following events with respect to plaintiff's claim for excessive force (Instruction No. 3):

Lynn Johnson

_____ Placing plaintiff on the board for reasons not related to maintaining or restoring order

_____ Leaving plaintiff on the board for an excessive period of time

_____ Mistreating plaintiff while on the board

Doug Serbousek

_____ Mistreating plaintiff while on the board

David Riniker

_____ Placing plaintiff on the board for reasons not related to maintaining or restoring order

_____ Mistreating plaintiff while on the board

B. We, the Jury, find in favor of defendant

Lynn Johnson _____

Doug Serbousek _____

David Riniker _____

on plaintiff's claim for excessive force (Instruction No. 3).

VERDICT FORM (Cont'd)

PART II: DENIAL OF MEDICAL CARE

(Answer either A or B for each defendant. Place (T) marks to indicate your response.)

A. We, the Jury, find in favor of plaintiff and against defendant

Lynn Johnson _____

David Riniker _____

on plaintiff's claim for denial of medical care (Instruction No. 4).

B. We, the Jury, find in favor of defendant

Lynn Johnson _____

David Riniker _____

on plaintiff's claim for denial of medical care (Instruction No. 4).

VERDICT FORM (Cont'd)

PART III: DAMAGES

(Answer Part III only if you find in favor of plaintiff and against at least one defendant under Part I or Part II.)

A. We, the Jury, award actual damages (See Instruction No. 5) in the amount of \$_____.

B. We, the Jury, award punitive damages (See Instruction No. 6) against the following defendant or defendants against whom we found liable under Part I or Part II above.

(Answer \$ 0 if you do not award punitive damages.)

Lynn Johnson \$_____

Doug Serbousek \$_____

David Riniker \$_____

FOREPERSON

JUROR

JUROR

JUROR

JUROR

JUROR

JUROR

JUROR

JUROR

JUROR